

**IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION**

Crim. Case No: HAC 331 of 2018

STATE

vs.

- 1. ASESELA NAUREURE**
- 2. MAIKA TOVAGONE**

Counsel: Ms. U. Tamanikaiyaroi with Mr. U. Lal for the State
Ms. L. Ratidara for 1st Accused
Ms. S. Hazelman with Mr. K. Skiba for 2nd Accused.

Date of Hearing: 26th, 27th, 28th 29th, 30th October, 2020, 3rd November 2020

Date of Ruling: 04th November 2020

RULING

1. The learned counsel for the Prosecution made an application under Section 116 (1) (c) of the Criminal Procedure Act, seeking leave to recall DC Inoke in order to tender certain items in evidence. The learned Counsel for the second accused objected to this application, stating that the proposed evidence does not essential for the just decision of this matter.
2. Having heard the oral submissions made by the learned Counsel for the Prosecution and the Defence, I now proceed to pronoun my ruling as follows.
3. I do not wish to discuss the evidence presented by the Prosecution so far in details. However, in brief, the Prosecution case is founded on the basis that the second accused was

arrested by two Police Officers few minutes after the alleged incident, at a location closed to the scene of the crime. The second accused was dressed in a shirt, shorts, and a pair of shoes which were similar to the shirt, shorts and the shoes of one of the suspects, recorded in the CCTV footage.

4. During the hearing, the Prosecution introduced a shirt, shorts and a pair of shoes to several Prosecution witnesses who identified them as the shirt, the shorts and the pair of shoes that the second accused was wearing on the 20th and 21st of August 2018. The Prosecution then marked those items as marked for identification, but did not tender them in evidence as exhibits of the Prosecution.
5. The learned Counsel for the Prosecution, making this application under Section 116 (1) (c) of the Criminal Procedure Act, submitted that the purpose of recalling DC Inoke is to tender these three items as exhibits of the Prosecution. DC Inoke has already given evidence, saying that he seized the shirt, the shorts and the pair of the shoes of the second accused on the 21st of August 2018 and listed them in the search list.
6. The learned Counsel for the Prosecution submitted that the tendering of these items in evidence is essential to just decision of this matter.
7. Section 116 (1) of the Criminal Procedure Act states that:

“At any stage of trial or other proceeding under this Act, any court may”

- (a) summon or call any person as a witness; or*
- (b) examine any person in attendance though not summoned as a witness; or*
- (c) recall and re-examine any person already examined -*

and the court shall summon and examine, or recall and re-examine any such person if the evidence appears to the court to be essential to the just decision of the case.

8. Accordingly, the main consideration that the Court is required to take into consideration is whether the recalling of this particular witness is essential to the just decision of the case. Just decision does denote not only a fair and just outcome but also an outcome reached through procedural fairness. Hence, the Court needs to consider two main issues. The first is whether the recalling of this particular witness would prejudice the Defence. If not, the second consideration is whether the proposed evidence of the recalling witness is essential to the just decision of the dispute.
9. The purpose of recalling this witness is to tender these items as exhibits of the Prosecution. This witness has already identified these items. This proposed evidence would not change the basis of the Prosecution case. Neither would it change the evidence already given by other witnesses of the Prosecution. Hence, I do not find the recalling of this witness would cause prejudice to the Defence.
10. The witness has already identified the items and marked them for marked for identification. Hence, the tendering of these items as exhibits of the Prosecution is essential to reach a just decision in this case.
11. Having considered the reasons discussed above, I allow the application of the Prosecution to recall DC Inoke pursuant to Section 116 (1) (c) of the Criminal Procedure Act.




.....
Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

04th November 2020

Solicitors

Office of the Director of Public Prosecutions for the State.
Office of the Legal Aid Commission for the 1st Accused.
Office of the Legal Aid Commission for the 2nd Accused.